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## State v. Gomez Respondent's Brief Dckt. 44071

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44071
Plaintiff-Respondent,	)	
	)	Canyon County Case No.
v.	)	CR-2015-14566
	)	
EDUARDO DAVID GOMEZ,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Gomez failed to establish that the district court abused its discretion by imposing a unified sentence of five years, with one and one-half years fixed, upon his guilty plea to possession of methamphetamine?

Gomez Has Failed To Establish That The District Court Abused Its Sentencing Discretion

On July 29, 2015, officers arrested Gomez on a parole violation warrant and, upon searching his person, located a glass pipe and a container of methamphetamine. (R., p.6.) The state charged Gomez with possession of methamphetamine. (R., pp.15-

16.) Pursuant to a plea agreement, Gomez pled guilty to possession of methamphetamine, the state agreed to dismiss the related charge of possession of drug paraphernalia and to not file a persistent violator enhancement, and the parties agreed to a unified sentence of five years, with one and one-half years fixed, and to recommend probation or, if Gomez's parole was revoked in the parole violation case, to recommend that Gomez's sentence in this case be imposed and run concurrently with the sentence in the parole violation case. (R., pp.39-43; PSI, p.10; Tr., p.5, Ls.11-21; p.17, Ls.7-23.) At sentencing, the state advised that Gomez had been found in violation of his parole and "the recommendation was for imposition." (Tr., p.21, L.19 – p.22, L.13.) Consistent with the plea agreement, the district court imposed a unified sentence of five years, with one and one-half years fixed, and ordered that the sentence run concurrently with the sentence in the parole violation case. (R., pp.72-73.) Gomez filed a notice of appeal timely from the judgment of conviction. (R., pp.74-77.)

Gomez asserts his sentence is excessive in light of his health and mental health problems and his abusive childhood. (Appellant's brief, pp.3-4.) There are two reasons why Gomez's argument fails. First, Gomez stipulated to the sentence he received and is therefore precluded by the invited error doctrine from challenging the sentence on appeal. Second, even if this Court reviews the merits of Gomez's claims, he has failed to establish that his sentence is excessive.

A party is estopped, under the doctrine of invited error, from complaining that a ruling or action of the trial court that the party invited, consented to or acquiesced in was error. State v. Carlson, 134 Idaho 389, 402, 3 P.3d 67, 80 (Ct. App. 2000). The purpose of the invited error doctrine is to prevent a party who "caused or played an

important role in prompting a trial court” to take a particular action from “later challenging that decision on appeal.” State v. Blake, 133 Idaho 237, 240, 985 P.2d 117, 120 (1999). This doctrine applies to sentencing decisions as well as to rulings during trial. State v. Leyva, 117 Idaho 462, 465, 788 P.2d 864, 867 (Ct. App. 1990).

As part of the plea agreement, Gomez stipulated to a unified sentence of five years, with one and one-half years fixed, with probation or, if his parole was revoked in the parole violation case, that his sentence in this case be imposed and run concurrently with the sentence in the parole violation case. (R., pp.39-40; Tr., p.5, Ls.15-21.) In reciting the terms of the plea agreement at the change of plea hearing, Gomez’s counsel stated, “Agree to a recommendation of one and a half fixed followed by three and a half indeterminate with probation. ... If he does face a parole violation, it’s going to be a recommendation of concurrent imposed.” (Tr., p.5, Ls.15-21.) Later, at the sentencing hearing, the district court stated its understanding of the plea agreement as follows:

Mr. Gomez appeared in front of me on January 21st, 2016, in which the parties agreed to a sentence of five years, one and a half fixed plus three and a half indeterminate with probation. Defendant is currently on parole. This was to run concurrent.

Has that parole been revoked, Mr. Dowell?

(Tr., p.17, Ls.7-14.) Gomez’s counsel responded that the parole violations were “being proceeded with.” (Tr., p.17, Ls.16-17.) The state then clarified, “The plea agreement was for probation if his parole hold was dropped or ... for imposition and concurrent if his parole is revoked.” (Tr., p.17, Ls.20-23.) The state subsequently recommended the agreed-upon sentence, and the district court followed the plea agreement and imposed a unified sentence of five years, with one and one-half years fixed, and ordered that the

sentence run concurrently with the sentence in the parole violation case. (R., pp.72-73.) Because Gomez received the sentence to which he stipulated as part of plea agreement, he cannot claim on appeal that it is excessive. Therefore, Gomez's claim of an abuse of sentencing discretion is barred by the doctrine of invited error.

Even if this Court considers the merits of Gomez's claim, he has still failed to establish an abuse of discretion. The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

The maximum prison sentence for possession of methamphetamine is seven years. I.C. § 37-2732(c)(1). The district court imposed a unified sentence of five years, with one and one-half years fixed, which falls well within the statutory guidelines. (R., pp.72-73.) At sentencing, the state addressed Gomez's history of criminal offending and refusal to abide by the terms of community supervision, absconding behavior,

ongoing dishonesty, and the risk he presents society. (Tr., p.22, L.14 – p.23, L.13 (Appendix A).) The district court subsequently articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Gomez’s sentence. (Tr., p.28, L.12 – p.30, L.12 (Appendix B).) The state submits that Gomez has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpts of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendices A and B.)

### Conclusion

The state respectfully requests this Court to affirm Gomez’s conviction and sentence.

DATED this 28th day of October, 2016.

/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 28th day of October, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

REED P. ANDERSON  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

## APPENDIX A



1 that came out. They had the hearing. He was  
2 found in violation of one or more conditions of  
3 parole. And that the recommendation is for  
4 imposition or to send him --

5 THE COURT: So they've got to go back to the  
6 parole commission, the hearing officer?

7 MR. CRESWELL: Yes. He's still waiting for  
8 a decision from the commission. There's no  
9 guarantee there. She thinks -- indicated there's  
10 a chance that they will put him back in the yard,  
11 but that remains to be seen. But as far as the  
12 parole hold, it sounds like it is not being  
13 dropped at this time.

14 Per the PSI, Your Honor, this appears  
15 to be the defendant's tenth felony conviction of  
16 record. He has numerous reports of -- indicates  
17 that he has numerous reports of parole violations  
18 for noncompliance, moving without permission,  
19 being around minors without permission, committing  
20 new crimes, and absconding. It says, quote,  
21 "Although he reported he is very ill, he still  
22 managed to jump out a hotel window in an effort to  
23 avoid supervision." It also says, "Mr. Gomez was  
24 dishonest throughout his interview." Also says,  
25 "Mr. Gomez is noted as being extremely dishonest

1 throughout his supervision notes during his time  
2 under the custody of IDOC." And it also says, "He  
3 continues to be a threat to the community."

4 The PSI does recommend incarceration.  
5 So does the State, Your Honor. The State is  
6 asking for, pursuant to the plea agreement, one  
7 and a half fixed prison time followed by three and  
8 a half indeterminate years for a total unified  
9 time of five years' prison time. We do ask the  
10 Court to impose the prison time and not grant any  
11 probation or retained jurisdiction. We do ask the  
12 Court to make this concurrent with his parole  
13 case.

14 And the State is asking for \$100 lab  
15 restitution for Idaho State Police Forensic  
16 Services. And we'll submit on anything else.  
17 Thank you.

18 THE COURT: Mr. Dowell, I'll hear you on  
19 behalf of Mr. Gomez.

20 MR. DOWELL: Thank you, Judge. Judge, as  
21 the Court is aware that this case, there was  
22 ultimately an 18-211, 18-212 ordered regarding  
23 competency. So obviously Eddie's been dealing  
24 with some mental health issues and had to get his  
25 head straightened out.

## APPENDIX B

1     pastors to speak in my behalf. I was really  
2     trying out there. Once I got that news, instead  
3     of relying on my wife to tell her what I was going  
4     through, I just took it on my own and just started  
5     abusing anything I could. And that was the worst  
6     decision I made because it made my health even  
7     worse. I just pray that you will have mercy on me  
8     today, Your Honor.

9             THE COURT: Anything in response from the  
10     State?

11            MR. CRESWELL: No, Your Honor. Thank you.

12            THE COURT: The Court has considered the  
13     presentence investigation report -- there's no  
14     victim statement here -- the plea agreement,  
15     recommendations of the attorneys, defendant's own  
16     statements. That presentence investigation report  
17     contained a GAIN-I assessment and a mental health  
18     review letter. Additionally, the Court had the  
19     advantages of a prior 18-211 psychological  
20     evaluation that was also reviewed in this case.

21            In determining the appropriate sentence  
22     to impose, this Court is guided by State of Idaho  
23     versus Toohill. I must look at, first, protection  
24     of society; second, deterrence to this defendant  
25     and to others; third, the possibility of

1 rehabilitation; and four, punishment or  
2 retribution. Additionally, I must consider those  
3 items set forth by the Idaho legislature in Idaho  
4 Code 19-2521 in balancing probation as opposed to  
5 incarceration.

6 In this case it is a possession charge.  
7 It's not a crime of violence. However, we're  
8 dealing with Mr. Gomez who has nine or ten prior  
9 felonies. Even though the State indicates -- I  
10 mean, the defense indicates most of them are back  
11 in 1999, since 2000, he's spent a significant  
12 period of that time in prison on a sex offense in  
13 2000. And then a failure to register as a sex  
14 offender in 2009.

15 I can understand that Mr. Gomez started  
16 feeling down, but he's 59 years of age, and it's  
17 time for him to learn and he should have learned  
18 by now that just because he looks at hardships in  
19 life, he can't revert to the same conduct of going  
20 back to using drugs again like he did. And he  
21 reverted to the same conduct he's been involved in  
22 and what he's done all his life, despite being 59  
23 years of age and despite numerous prior  
24 interventions to try to get him off of drugs.

25 It appears he's going to prison anyway

1 on a parole violation. This Court believes that  
2 defendant's record merits some sort of punishment.  
3 A message of deterrence must be sent. But I don't  
4 think that should be extreme. I think  
5 rehabilitation should remain a goal, and that's  
6 why I'm going to impose the following.

7 I will impose a sentence of five years,  
8 one and a half years fixed followed by three and a  
9 half years indeterminate. I will grant credit for  
10 227 days served. That leaves you nine or ten  
11 months left to serve, Mr. Gomez, before you're  
12 eligible for parole.

13 I wish you the best of luck. I hope  
14 you get up as early as you can before the parole  
15 commission and take advantage of whatever  
16 opportunities they give you to aid yourself once  
17 you're incarcerated.

18 I will order that you pay total fines  
19 including court costs totaling \$500. Pay \$100  
20 restitution for drug testing. If you've not  
21 previously done so, you will have to submit a DNA  
22 sample and a right thumbprint that will be lodged  
23 in the Idaho State Police database for future  
24 cross reference.

25 MR. CRESWELL: Is there a PD reimbursement